

**STANDARD FORM OF CONTRACT BETWEEN OWNER AND CONTRACTOR
FOR LIMITED CONSTRUCTION WORK – DEQ Contract No. 409005**

This CONTRACT is entered into by and between the STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY (“DEQ”), and the CONTRACTOR (“Contractor”).

WITNESSETH, that Contractor and DEQ for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK. Contractor agrees to perform the following work procured by informal solicitation and described as follows:

1. Work will be located at the East Arm of Spring Meadow Lake located in Spring Meadow Lake Park located just west of Helena, MT in Lewis and Clark County (Project Location) as shown on Sheet 1. Work will include clearing and grubbing the removal area, excavating soil and sediment, loading the material into haul vehicles, transporting the material approximately 400 feet to an onsite stockpile location, placing the waste in a stockpile, covering the stockpile with a singular polyethylene tarp, securing the tarp with sandbags and landscape spikes and washers, and re-grading the excavation bank slope.
2. “Engineer”, DEQ’s representative during the construction period, will mark, in the field, the removal area, trees to be saved, section of fence to be dismantled and restored, and stockpile location.
3. The Project Location is shown on Sheet 1, Attachment 3. Excavation detail is shown on Sheet 2, Attachment 3. Standard Specifications for Work are Attachment 1, and the Bid Form is Attachment 2.
4. This work includes four (4) separate lump sum bid items, of which, quantities are set forth on the Bid Form.
 - a. **Bid Item 1: Mobilization/Demobilization.** Work under this bid item includes all actions necessary for the transportation and movement of personnel, equipment, supplies and incidentals to the Project Location prior to beginning Work and transportation and movement of these items away from the Project Location upon completion of Work, insurance, dismantling approximately 20 feet of fence as shown on Sheet 1 and restoring the dismantled section of fence upon completion of Work items, construction of haul route, and site cleanup.
 - i. Engineer will identify the approved equipment staging area during the pre-contract meeting as set forth in Article 5.
 - ii. The chain link fabric from the section of dismantled fence shall be reconnected at end of each work shift to maintain site security.
 - b. **Bid Item 2: Soil Excavation, Haul, and Soil Stockpile.** Work under this bid item includes clearing and grubbing the removal area as shown on Sheets 1 and 2, excavating approximately 1,000 cubic yards of contaminated soil and sediment from the East Arm of Spring Meadow Lake to a depth of two (2) feet below ground surface as shown Sheets 1 and 2, loading the soil and sediment into haul vehicles, hauling the material approximately 400 feet to a designated onsite stockpile area as shown on Sheet 1, and placing the waste in an approximate 80 foot by 80 foot by 6 foot high stockpile as shown on Sheet 1.
 - c. **Bid Item 3: Cover Stockpile with One (1) Singular Heavy Duty Polyethylene Tarp, Anchor with Sandbags on 5 foot grid, and Secure with Landscape Spikes and Washers.** Work under this bid item includes covering the approximate 500 square yard stockpile with one (1) singular heavy duty (6 ounce per square yard, 1200 denier, 14 X 14 mesh) polyethylene tarp, placing 25 pound sandbags on the tarp laid on a five (5) foot grid, and placing 12 inch landscape spikes and washers in each tarp grommet to secure the tarp.
 - d. **Bid Item 4: Re-grade Excavation Bank Slope.** Work under this bid item includes re-grading the edge of the excavation to provide a uniform bank slope as shown on Sheet 2.
5. Work shall be completed in accordance with the attached DEQ Abandoned Mine Standard Specifications Section 201: Clearing and Grubbing; Section 202: Excavation and Embankment; and Section 206: Haul; and Section 501 Mobilization.

ARTICLE 2. TIME OF COMPLETION. The effective date of this Contract shall be the latter of the two dates of signature as set forth in Article 13. **Work will start no earlier than February 17, 2008 and will be completed by March 15, 2009**, upon which day this Contract will be terminated, unless this Contract is extended by written amendment as set forth in Article 10.

ARTICLE 3. THE CONTRACT SUM. DEQ shall pay Contractor:

1. For Work, as set forth in Article 1, the costs set forth on the Bid Form:
 - a. The lump sum bid for Bid Item 1: Mobilization/Demobilization
 - b. The unit price bid per cubic yard for the actual number of cubic yards for Bid Item 2: Soil Excavation, Haul, and Soil Stockpile
 - c. The unit price bid per square yard for the actual number of square yards for Bid Item 3: Cover Stockpile with One (1) Singular Heavy Duty Polyethylene Tarp, Anchor with Sandbags on 5 foot grid, and Secure with Landscape Spikes and Washers.
 - d. The lump sum bid for Bid Item 4: Re-grade Excavation Bank Slope
2. All pay item measurements will be made by Engineer.
3. All costs in connection with Work, including, but not limited to, the furnishing of materials, loading, hauling and placement of materials, equipment, tools, supplies, and providing all necessary labor and supervision to fully complete Work, shall be included in the unit price bid. No item that is required for the proper and successful completion of Work will be paid for outside or in addition to the unit price bid.

ARTICLE 4. FINAL PAYMENT. Final payment to be made based on the costs as set forth in Article 3. Final payment shall be made by DEQ to Contractor under DEQ purchase order in accordance with the time periods specified by state law, when: 1) the work has been completed to DEQ's satisfaction; 2) the Contract is fully performed, and 3) Engineer has determined the actual quantity of soil/sediment excavated from the site.

ARTICLE 5. MEETINGS. The Contractor is required to attend a pre-contract meeting with DEQ and Engineer in which the procedures for implementing the Contract and Work set for in Article 1 will be discussed. The Contractor is also required to attend a post-contract meeting with DEQ and Engineer to determine that all Work has been completed to DEQ's satisfaction.

Contractor is required to meet with DEQ and Engineer, to resolve technical or contractual problems that may occur during the term of this Contract or to discuss the progress made by Contractor and DEQ in the performance of their respective obligations, at no additional cost to DEQ. Meetings will occur as requested by DEQ and will be coordinated by DEQ.

ARTICLE 6. JURISDICTION AND VENUE. The laws of Montana govern this Contract. The parties agree that any litigation concerning this contract, unless the parties agree to arbitration or mediation, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and the parties consent to personal jurisdiction, subject matter jurisdiction, and venue in that court. Each party shall pay its own costs and attorney fees.

ARTICLE 7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING. Contractor shall not assign, transfer or subcontract any portion of this Contract without the express written consent of DEQ. Contractor shall be responsible to DEQ for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationship exists between any subcontractors and DEQ.

ARTICLE 8. HEALTH AND SAFETY. The Work to be performed under this Contract is inherently hazardous. **Contractor is responsible for establishing the standards of safety for its employees, landowners, agency representatives, and invitees.**

1. Contractor shall ensure that all its personnel at the Project Location follow the requirements of a Health and Safety Plan. Contractor shall submit a site specific Health and Safety Plan to DEQ PRIOR to beginning Work. Contractor agrees to comply with the site Health and Safety Plan and with the Hazardous Waste Operations and Emergency Response regulations contained at 29 Code of Federal Regulations 1910.120, as well as all other applicable federal or state health or safety laws and regulations, including without limitation, the Montana Safety Act including § 50-71-201, 202 and 203, MCA.

2. Contractor shall provide written documentation to DEQ, PRIOR to beginning Work, that all employees engaged in Work have received the OSHA 40-hr Hazardous Waste Operations and Emergency Response (HAZWOPER) Training required under 29 CFR 1910.120.

ARTICLE 9. BONDS / RETAINAGE. No bonds will be required under this Contract. However, pursuant to Section 18-2-404 (2), MCA, at least \$1,000 under this Contract will be withheld until the completion of the Work. These monies are to be withheld to ensure Contractor's faithful performance of the terms of this Contract. Faithful performance shall include, without limitations, timely delivery of work products or services, compliance with the record keeping requirements, timely progress toward specified deadlines, and provision of all required work products and services in a satisfactory manner.

DEQ may decline to pay amounts so retained if, in DEQ's determination, Contractor fails to faithfully perform the Work. Prior to declining to pay retainage, DEQ shall provide Contractor with ten (10) working days written notice informing Contractor of DEQ's intent not to pay and documenting the basis for DEQ's determination of Contractor's nonperformance. DEQ and Contractor agree to use their best efforts to resolve any disputes concerning payment of monies retained. The amount of the retainage shall not constitute a measure of damages or a limit on damages to which DEQ is entitled for failure of performance or other breach by Contractor.

ARTICLE 10. MODIFICATIONS This Contract may not be enlarged, modified, or altered except by a written modification signed by DEQ and Contractor and attached to the original of this Contract. No handwritten change, addition or erasure of any printed portion of this Contract or on any task order issued pursuant to this Contract shall be valid or binding upon either party.

ARTICLE 11. TERMINATION. This Contract may be terminated by either party in the event of default or by DEQ for its convenience as set forth below:

1. This Contract (or any task order or work order issued under this Contract) may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) calendar days' actual written notice of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. The notice shall identify the date Contractor is to stop any or all of the work required under any task order(s) or work order(s). Upon termination for default, the parties shall have such rights and remedies as each would have against the other at law or in equity under the statutes, rules, and case law of the State of Montana. DEQ and Contractor agree that in the event either of them incurs any legal costs or attorney's fees whatsoever, each party shall pay its own legal costs and attorney's fees.
2. This Contract may be terminated in whole or in part in writing, by the DEQ for its convenience, provided that the Contractor is given: (1) not less than ten (10) calendar days' actual written notice of intent to terminate, and (2) an opportunity for consultation with DEQ prior to termination. The notice shall identify the date Contractor is to stop any or all of the work required under any task order(s) or work order(s). Upon termination for DEQ's convenience, Contractor shall be entitled to payment in accordance with this Contract (or any task order) for services rendered and expenses incurred by Contractor during the period prior to the effective date of termination.

ARTICLE 12. MISCELLANEOUS.

1. Taxes/Permits/Fees. Contractor shall secure and pay for all permits and inspections, give all notices, pay all taxes and fees and comply with all laws, ordinances, rules, regulations and lawful orders bearing on the performance of the work.
2. Labor/Materials Equipment. Unless otherwise specified, Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction and services for the proper execution and completion of the work. Unless otherwise specified, all material and equipment provided shall be new and in good condition. All workmanship shall be of good quality and in keeping with the standard of the respective trades.
3. Indemnification and Insurance. Contractor shall maintain for the duration of the contract, at its cost and expense, insurance at the limits and types required by DEQ for this Contract, against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, its agents, employees, representatives, assigns, or subcontractors.

- a. Hold Harmless and Indemnification: Contractor agrees to protect, defend, and save the state, its elected and appointed officials, agents, and employees harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, on account of bodily or personal injuries, death, or damage to property arising out of services or work performed or omissions or work or in any way resulting from the acts, negligent or otherwise, or omissions of Contractor, its agents, employees, assigns, and/or subcontractors under this Contract.
- b. Contractor's Insurance: **Insurance required under all sections herein shall be in effect for the duration of the contract.** Insurance required herein shall be provided by insurance policies issued only by companies currently authorized to do business in the state of Montana. No Contractor or Subcontractor shall commence work under this Contract until all required insurance has been obtained and proof of insurance, in the form of certificates of insurance satisfactory to DEQ, have been delivered to DEQ.
- c. Contractor shall carry **Workers' Compensation Insurance**, maintained at the limits required by statute. Such Workers' Compensation Insurance shall protect Contractor from claims made by its employees, the employees of any Subcontractor, and claims made by anyone directly or indirectly employed by Contractor or Subcontractor. Contractor shall require each Subcontractor to provide Workers' Compensation Insurance.
- d. Contractor shall carry occurrence coverage **Commercial General Liability Insurance** including coverage for premises, operations, independent contractor's protective, products and completed operations, broad form property damage, and comprehensive automobile liability insurance with not less than the following limits of liability: \$100,000 per occurrence; aggregate limit of \$300,000.
- i. The Commercial General Liability Insurance shall provide coverage for bodily injury (including accidental death), and property damage which may arise out of the work under this Contract, or operations incidental thereto, whether such work and operations be by Contractor or by Subcontractor or by anyone directly or indirectly employed by Contractor or Subcontractor, or by anyone for whose acts any of them may be liable.
- ii. Contractor's insurance policies shall list DEQ as an additional insured. Should Contractor not be able to list DEQ as an additional insured, Contractor shall purchase a per occurrence Owner's / Contractor's Protective Policy (OCP) with DEQ as the insured party in the same occurrence and aggregate limited as indicated above for the Contractor's Commercial General Liability Policy.
- iii. Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, pile driving, excavation, filling, grading or from the moving, shoring, underpinning, raising or demolition of any building or structure or structural support thereof.
- iv. Contractor's insurance coverage shall be PRIMARY insurance as respects DEQ, its officers, elected and appointed officials, employees and volunteers. Any insurance or self insurance maintained by the state, its officers, elected and appointed officials, employees and volunteers shall be excess of the Contractor's insurance and shall not be attributable to it.
- e. The insurance required under this Contract shall not be cancelled or materially changed unless Contractor provides at least thirty (30) days prior written notice to DEQ.
4. Construction Contractor Registration. Contractor represents that it has registered with the Department of Labor & Industry under 39-9-201 and 39-9-204, MCA, PRIOR to this Contract being executed by the State of Montana, and has provided a copy of the registration certificate to DEQ.
5. Gross Receipts Tax. In compliance with 15-50-206, MCA, Contractor will have 1% of his gross receipts withheld by DEQ from all payments due for Contracts over \$5,000. Each subcontractor who performs work greater than \$5,000 shall have 1% of its gross receipts withheld by Contractor. Contractor shall notify the Department of Revenue on the department's prescribed forms.
6. Equal Employment Opportunity. All hiring and other employment practices shall be non-discriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

7. Record Keeping. Payrolls and basic records pertaining to the project shall be kept by Contractor according to generally accepted accounting principles and shall be available to DEQ, Legislative Auditor, the Legislative Fiscal Analyst or his authorized representative at mutually convenient times. Contractor shall keep accounting records for a period of three years after completion and acceptance of the project by DEQ.

8. Montana Prevailing Wage Rate Requirements. Contractor must comply with the requirements for payment of wages set out in Title 18, Chapter 2, Part 4, MCA. The rates applicable to this project will generally be the rates specified for heavy and highway construction. Contractor agrees to pay required wage rates and comply with all other legal requirements for fringe benefits, hours and working conditions. The rates specified are minimum rates, and where the federal rate differs from the state rate, the higher of the two will be the required minimum. Bidder should, if uncertain of legal requirements or applicable rates for this project or certain categories of workers, seek clarification from the Montana Department of Labor and Industry. (Phone 406-444-5600 / email <http://rad.dli.state.mt.us>).

If Contractor employs any person in a trade or occupation not classified in the wage determinations, such person shall be paid at not less than such rates as shall be determined by the Montana Department of Labor and Industry. Such approved minimum rate shall be retroactive to the time of the initial employment of such person in such trade or occupation. Contractor shall notify DEQ of its intention to employ persons in trades or occupations not classified in sufficient time to obtain approved rates for such trades or occupations.

Under 18-2-406, MCA, Contractor must post in a prominent and accessible location at the site, not later than the first day of Work, a legible statement of all wages to be paid to employees employed at the site. Under 18-2-423, MCA, any employees receiving an hourly wage are to be paid on a weekly basis.

Under 18-2-422, MCA, Contractor must maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, for a period of not less than three years after the Contractor's completion of Work on the project.

9. Compliance with Laws. The Contractor must, in performance of Work under this Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontractor shall comply with this provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

ARTICLE 13. EXECUTION. DEQ and Contractor through their authorized agents have executed this Contract on the dates set out below. The Effective Date of this Contract, shall be the latter of the two dates of signature

CONTRACTOR:

Company

Date

OWNER:

STATE OF MONTANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VICKI WOODROW

Contracts Officer

Financial Services

Metcalf Building, Room 003

1520 East Sixth Avenue

Helena, Montana 59620-0901

Date

Taxpayer's I.D. No. _____

Approved for Legal Content:

Contractor's Registration Certificate No. _____

Thomas E. Root

DEQ Legal Counsel

Date